Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,

Petitioner,

v.

Danilo Davis Pereira,

Respondent.

On Petition For Writ of Certiorari
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

On October 15, 2002, Isidoro Rodriguez, Esq.'s ("Rodriguez"), filed this amended action against his former client, his former agent Respondent Danilo Devis Pereira ("Devis"), and other various defendants. Rodriguez seeks to enforce his statutory property rights in his Virginia Attorney's Lien, VA Code §54.1-3932, for $4.6 million, and interest and penalty; as well as to protect said property rights, business and profession from a business conspiracy, VA Code §§ 18.2-499 and 500. Pursuant to Virginia Long-Arm Statute VA Code § 8.01-328.A(1) and (4), jurisdiction as to Devis is based on his conducting business and tortious acts from 1987 to the present, in aid of the alleged business conspiracy. Devis were noticed and served in the Republic of Colombia under the Inter-American Convention on Letters of Rogatory. Devis "fell into default." Although the Fairfax County Circuit Court had entered against Devis a Default Judgment in a parallel action, Devis had entered Virginia recently in January 2004, to assist his co-defendant in filing a fraudulent Virginia State Bar Complaint against Rodriguez, and Devis had failed to file any response, the District Court denied a motion for default judgment and jury trial on damages, and dismissed the complaint without prejudice.

I. WHETHER JUDGE LEE ERRED IN NOT COMPLYING WITH 28 U.S.C. § 2072, § 1738, INTER-AMERICAN CONVENTION ON LETTERS OF ROGATORY, AND VA CODE § 8.01-428?

II. WHETHER JUDGE LEE ERRED BY DISMISSING THE MOTION FOR DEFAULT WITHOUT REQUIRING DEVIS TO PRESENT EVIDENCE TO SUPPORT *VOIDING* HIS "FALLING INTO DEFAULT UNDER THE INTER-AMERICAN CONVENTION ON LET-

TERS OF ROGATORY AND VA CODE § 8.01-428(A)(II)?

III. WHETHER JUDGE LEE ERRED BY NOT FOLLOWING VIRGINIA LAW ON PROVIDING THE DEMANDED JURY TRIAL ON AS TO THE BUSINESS CONSPIRACY?

IV. WHETHER BASED ON ITS CURRENT POLICY AGAINST *PRO HOC VICE* PRACTICE, JUDGE LEE AND THE FOURTH CIRCUIT HAVE DEPRIVED RODRIGUEZ OF HIS SUBSTANTIVE STATUTORY PROPERTY RIGHTS IN HIS VIRGINIA ATTORNEY'S LIEN, WITHOUT DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS?

V. WHETHER JUDGE LEE AND THE FOURTH CIRCUIT HAVE VIOLATED THEIR DUTY UNDER 18 U.S.C. §§ 4 AND 1001?

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CITATIONS TO UNPUBLISHED OPINIONS BELOW

The unpublished opinion of the Fourth Circuit dated January 24, 2006, is reprinted at (A-4); and denial of Rehearing *En Banc* dated March 13, 2006, is reprinted at (A-3).[1] The unpublished Amended Final Judgement of Hon. Judge Gerald Bruce Lee, U.S. District Court of the E. D. of Virginia, dated September 19, 2005, is reprinted at (A-6). The unpublished Order and Memorandum of the Hon. Judge Gerald Bruce Lee, U. S. District Court for the E. D. of Virginia, No. 02CV1523-A, December 16, 2002, is reprinted at A-9. The unpublished bench opinion and Order of the Hon. Judge James C. Cachceris of the U. S. District Court for the E. D. of Virginia, No. 00CV1523-A, December 20, 2000, are reprinted at A-19 and A-24.

STATEMENT OF JURISDICTION

The unpublished opinion of the Fourth Circuit was entered on January 24, 2006(A-4); and the denial of Rehearing *En Banc*, on March 13, 2006 (A-3). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and § 2072.

STATEMENT REQUIRED BY RULE 29.4

The Court is informed that 28 U.S.C. § 2403 applies and this Petition has been served upon the Solicitor General of the United States.

U.S. AND VIRGINIA CONSTITUTION, FEDERAL AND VIRGINIA STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

Rodriguez is a Virginia resident and active member of the Virginia Bar since 1982, who was retained by the Board of Director's of Defendant Sea Search Armada *et al.* ("SAA Entities"),[2] to serve as their Legal representative and

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[2] Defendant SSA Entities are a joint venture of entities and individuals that assumed Sea Search-Armada and Armada Company's claim to 14 sunken treasure troves targets off the coast of Colombia valued at $3 to $10 Billion. To obtained jurisdiction to sue in Colombia, the Board of Directors passed a Board Resolution giving all their authority to Rodriguez as a

managing attorney of their $10 Billion contract litigation against the Republic of Colombia.

In January 1989, Devis as precondition to a contract with Rodriguez to serve as his agent, and local counsel, Devis agreed to subject himself to the jurisdiction of the Virginia (Complaint page 6 at ¶g). *See* Virginia State Bar Legal Ethics Opinion #1325, February 27, 2990 (A-27, ¶ 3).[3]

Subsequently, Devis did gained substantial revenue in transacting business for more than 12 years as Rodriguez's agent and fiduciary under the laws of Virginia. Devis as Rodriguez's agent traveled various times from 1995 to the present to Virginia to conduct meetings with SSA Entities Lobbyist Defendant Mr. Guy Vander Jagt ("SSA Entities Lobbyist"), to discuss both the status of litigation and strategy against the Government of Colombia (Complaint page 15 at ¶41).

However, after settlement negotiations were entered into with Colombia, to avoid their compliance with the provision of the Foreign Corrupt Practices Act, SSA Entities, Devis, and SSA Entities Lobbyist did undertake a business

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member of the Virginia State Bar whose his fiduciary duty was governed by Virginia. The Board Resolution has never been rescinded, and is effective to the present.

[3]In their Ethics Opinion the Virginia State Bar stated that Rodriguez's fiduciary duty, and obviously as well as of his agent and employees, were under the supervision of the Virginia State Bar irrespective of his providing legal services in Colombia, or any where in the World, and that he had a right to sue his client SSA Entities for his fees in case of fraud.

conspiracy to fraudulently deprive Rodriguez of his substantive statutory property right in his Virginia Attorney's Lien.[4]

The record shows that after transacting business as Rodriguez's agent under the laws of Virginia, Devis: first, sent a letter form the Republic of Colombia into Virginia to Rodriguez to support the illegal termination of Rodriguez as Legal Representative of SSA Entities on April 6, 2000, by making false statements; and, second Devis assisted SSA Entities to fraudulently dissolved and illegal transferred their interest in 15 sunk treasure ships in June 2002, to avoid Rodriguez's Virginia Attorney's Lien (Complaint page 17 to 20, ¶¶ 53-67).

On October 15, 2002, the instant amended Complaint was filed. On October 28, 2002, Hon. Judge Gerald Bruce Lee ("Judge Lee"), signed the Summons issued by the Clerk to be served on Devis in the Republic of Colombia pursuant to the Inter-American Convention on Letters of Rogatory, S. Treaty Doc. 98-27, 98th Cong., 2d sess., (1984), pp. III-V, XI.; 14 Int'l Leg. Mat. 339 (March 1975); 18 Int'l Leg. Mat. 1238; Martindale-Hubbed Law Directory, Law Digest Volume, Selected International Conventions ("Treaty")(Docket Entry 1, dated October 17, 2002).

However, without either Devis as yet being served under the Treaty, or having entering an appearance, or having filed pleadings, or having argued, Judge Lee dismissed Devis his order on December 16, 2002 (A-9).

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[4] Claimed value of the Attorney's Lien is $4.6 million based on *quantum merit* for 12 years of legal service from August 1988 to April 2000, when the contract was tortuously interfered with and breached-without Board of Directors' Resolution.

Although no hearing was had on Devis, Judge Lee based his order on the earlier dismissal without prejudice of the previous declaratory judgment action by the Hon Judge James C. Cachceris (A-19). In this earlier action no consideration was given of the statutory bases of personal jurisdiction to enforce Rodriguez property right in his Virginia Attorney Lien. Also the allegation of business conspiracy was not present.

Subsequently, on February 14, 2003, Rodriguez filed a Praecipe confirming compliance with service on Devis in accordance with the provisions of the Treaty. In accordance with the Treaty and Va Rule 3:5 and :17, Devis was properly notice and served on October 8, 2003, with a copy of the Complaint and Summons issued by the Clerk and signed by Judge Lee.

Although not responding to the Federal Summons, in January 2004, Devis entered Virginia by mailing a false statement supporting SSA Entities filing a fraudulent Virginia State Bar Complaint against Rodriguez (VSB Docket # 04- 052-0794).

Based on these facts in a parallel related action the Fairfax Circuit Court entered a Default Judgment Order against Devis on January 15, 2005, *Isidoro Rodriguez, Esq. v. Mr. Guy VanderJagt, Esq., et al*, Law No.: 215327 (McWeeny, J.). Therefore Rodriguez filed a Motion for Default Judgment in January 2005, based on Devis "falling into default" by not responding to the Summons and Complaint filed under the Treaty in October 2003.

In response Devis adopted a peculiar procedural position by neither responding to dispute the business conspiracy to commit fraud against Rodriguez' substantial property rights in his Virginia Attorney's Lien, nor disputing

proper notice and service, nor presenting any evidence as to why jurisdiction was not present to support the default judgment order.

Disregarding the above facts Judge Lee on July 22, 2005, issued a summary dismissal of the action with prejudice. But after Rodriguez filed motions under FRCP 59(e) and 60, Judge Lee entered Amended Final Order to dismiss the action without prejudice on September 19, 2005 (A-6).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

This Court's review of the Fourth Circuit's unpublished decisions is warranted because the Fourth Circuit and Judge Lee, have (i) "decided an important federal question in a way that conflicts with a decision by a state court of last resort;" and, (ii) "so far departed from the accepted and usual course of proceedings, and sanctioned such a departure by a lower federal court, as to call for an exercise of this Court's supervisory power."

DISCUSSION

I. JUDGE LEE ERRED IN NOT COMPLYING WITH 28 U.S.C. § 2072, § 1738, INTER-AMERICAN CONVENTION ON LETTERS OF ROGATORY, AND VA CODE § 8.01-428.

The Supreme Court has held that a void order can be attacked in any proceeding where the judgment come into issue. *Pennoyer v. Neff*, 95 US 714 (1877); and, *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect")(Emphases added).

Rodriguez challenge Judge Lee's orders of September 19, 2005 (A-6), and December 13, 2002 (A09) as *void*.

Judge Lee acted outside of his judicial capacity in dismissing Devis when he was as yet not a party to the action-this despite the fact that it was Judge Lee who ordered service under the Treaty. Furthermore, no meaningful "access to the court" was provided since no argument was permitted by Judge Lee on jurisdiction based on violation of VA Code § 18.2-500, much less Devis' part in the Business Conspiracy (A-12). Finally, the Treaty controlled the issue of jurisdiction over Devis. Once Devis was given Notice and served under the Treaty and Davis had fell into default, then Judge Lee had authority over Devis-put here too Judge Lee acted outside of his judicial capacity by not complying with State law on the issue of default.

In Virginia jurisprudence, a major concern that drove Virginia's default doctrine, was a deterrence policy, i.e. "the defendant is the architect of his own misfortune." Kent Sinclair, 2006 Guide to Virginia Law/Equity Reform and Other Landmark Changes, Ch. 7 page 166, Mathew Bender & Company, Inc. Charlottesville, VA 22906-7587. Thus, pursuant to Va Rule 3:5 and :17, a failure of the defendant, even a non-resident defendant, to plead within 21 days from service, will place the defendant in default. The defendant automatically is "falling into default," receipt of service--without the need of plaintiff to take any action. 2006 Guide at 170); *See also*, *The Virginia Lawyer: A Deskbook for Practitioners*, Vol I, section 3, ¶ 3.207(A), Virginia Bar Association.

"Generally, when there is a default, on the motion of plaintiff the court will issue judgment upon liquidated

damages, or, if plaintiff demands, put the damage issue to a jury." Sinclair, 2006 Guide at 173.

Consistent with this Constitutional principal, both 28 U.S.C. § 2072, and 28 U.S.C. § 1738, mandate that federal district courts are bound to follow the substantive law of the state in which the court is sitting. The United States Supreme Court has held similarly. *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.E. 1188 (1938).

As explained by Justice Felix Frankfurter in *Guaranty Trust Co. v. York*, 326 U.S. 99, 65 S.Ct. 1464, 89 LE 2079:

> The intent of the [*Erie*] decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a state court. (Emphasis added)

As the Seventh Circuit explained in *Allstate Insurance v. Menards, Inc*, 18 F.3d 1155 at 1161 (7th Cir. 2002), that to maintain the constitutional line between limited federal lawmaking power and state residual lawmaking power,

> *Erie* requires that the federal court follow an analytical path that ensures that the law applied in federal proceedings is the law that "ultimately would be applied were the case to be litigated in the state courts." *Roberts v. S. Life Ins. Co.*, 568 F. Supp. 536, 539-40 (N.D. Ill. 1983) (Emphasis added.

Thus given the Fairfax Circuit Court had issued an order finding Devis in default based on the above facts, in accordance with 28 U.S.C. § 2072, 28 U.S.C. § 1738 *Erie*, the lower court does not have the freedom to depart from, disregard, or modify existing Virginia decisional law and statute regarding the entering of a default judgment. *King v Order of United Commercial Travelers of America*, 333 U.S. 153, 68 S.Ct. 488, 92 L.E. 608 (1948).

The Federal Court can neither seek to change what appears to be the present law, *Cantwell v. University of Massachusetts* 551 F.2d 879 (1st Cir. 1977), nor can they "correct" a state court's interpretation of its own law, *Tarr v. Manchester Insurance Corp.*, 544 F.2d 14 (1st Cir. 1976).

II. JUDGE LEE ERRED BY DISMISSING THE MOTION FOR DEFAULT WITHOUT REQUIRING DEVIS TO PRESENT EVIDENCE TO SUPPORT *VOIDING* HIS "FALLING INTO DEFAULT UNDER THE INTER-AMERICAN CONVENTION ON LETTERS OF ROGATORY AND VA CODE § 8.01-428(A)(ii).

A. *Devis Must Present Evidence to Support Voiding The Default Judgment.*

The Supreme Court of Virginia recently construed VA Code § 8.01-428, to hold that public policy favors certainty of results in judicial proceedings, "so that it attached a high degree of finality to judgments, whether obtained by default or otherwise," *State Farm Mutual Automobile Insurance Company v. Christine B. Remley et al.*, 270 Va. 209, 215, 618 S.e.2d 316, 320 (2005).

Consequently, although normally the burden of proving personal jurisdiction rests upon the Plaintiff, *Mylan Laboratories, Inc. v. Akzo*, 2 F.3d 56, 60 (4th Cir. 1993),

once Devis has fallen into default-when there has been notice and an opportunity to be heard, to fit into the narrow exception under Va Code § 8.01-428(ii), to *void* the default judgment it is Devis that has the burden of placing into evidence facts disproving the jurisdiction facts that supported the entry of the default judgment.

But Judge Lee did not require Devis to enter any evidence disputing personal jurisdiction to support not entering a final default judgment. Thus Judge Lee acted outside of his limited jurisdiction.

B. *Rodriguez Met The Personal Jurisdiction Two-step Statutory And Constitutional Inquiry.*

Assuming only for the purpose of argument that despite Devis falling into default, it is Rodriguez that still has the burden to show jurisdiction under the long-arm statute, Rodriguez has met his burden. At the outset it is the function of the Federal Court, sitting in a diversity action as a State Court , "to assert jurisdiction over nonresidents who engage in some purposeful activity in Virginia, to the extent permissible under the Due Process Clause." *Nan Ya Plastics Corp. v. DeSantis*, 237 Va. 255, 259 (1989).

To make that determination, the Judge Lee must consider all of the elements of the asserted cause of action in order to determine the statute's scope, *Krantz v. Air Line Pilots Association. International, et. al.*, 245 Va. 202 (1993), as well as the evidence placed in the record

This was not done by Judge Lee of the Circuit Court.

Here Rodriguez agues that Va. Code § 8.01-328.1(A)(1)(2) and (3) is satisfied, based Devis agreeing to a contract to serve as Rodriguez's agent under the

jurisdiction or the Virginia. That Devis did so to obtain the protection to his fees. That Devis traveled to Virginia to transact business with SSA Entities Lobbyist. That Devis tortiously acted outside of Virginia as recently as January 2004, in furtherance of a business conspiracy to injure Rodriguez's business or profession in violation of VA Code § 18.2-500.

Devis presented no evidence to refute these facts.

However, the Supreme Court of Virginia in *Krantz v. Air Line Pilots Assoc., Int'l*, 245 Va. 202 (1993), found personal jurisdiction present when a foreign national took a similar position.[5]

The statutory prong being met, the Judge Lee must then determine whether an exercise of jurisdiction over the Devis would satisfy the Due Process clause of the 14th Amendment to the U.S. Constitution.

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[5]In that case, the Plaintiff alleged that Defendant tortiously interfered with his employment contract by sending certain derogatory emails from New York into a computer system called ACCESS, which was operating in Virginia. The Court observed that "[w]ithout the use of ACCESS, a Virginia facility, Nottke could not have obtained those recruits, and there would have been no interference with Krantz' prospective contract . . ." *Id.* at 206. The Court acknowledged that the mere sending of an email by the Defendant into the forum state would not alone have sufficed to confer personal jurisdiction and concluded that the Defendant also used the services of other people in Virginia to execute his plan of tortious interference. Thus, the Supreme Court upheld jurisdiction, finding that the New York Defend-ant's acts in Virginia facilitated the consummated tort. In the instant actions co-Defendant Vander Jagt and Pledger are Virginia residents, who have participated in the business conspiracy.

Due process is satisfied where the Devis was given fair and adequate notice of the proceedings against him in accordance with the Inter-American Convention and Va Code, and where exercise of jurisdiction would be fair under the circumstances.

The standard of fairness developed in the case law is two-fold, consisting of separate minimum contacts and reasonableness tests. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In assessing whether minimum contacts exist, the Judge Lee was to consider the nature and quantity of the Devis' contacts with the forum state, and the connection of those contacts with the cause of action. *Id.* at 318. Furthermore, the Judge Lee must examine the forum state's interest in providing its citizens with a vehicle to address legal grievances. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957). The Judge Lee must also determine whether in establishing contacts in the forum state, the Devis purposefully availed himself of the protection of the forum state. *Hanson v. Denkla*, 357 U.S. 235, 253 (1951).

In this latter context, the action should not have been dismissed for lack of jurisdiction when neither discovery not argument was permitted of jurisdictional facts. *See Oppenheimer Fund v. Sanders*, 437 U.S. 340, 351 note 13 (1978).

Once Rodriguez has proven that minimum contacts have been established, it must then decide whether its exercise of jurisdiction would be reasonable by assessing the burden on the Devis of litigating in an inconvenient forum. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113 (1987).

The first facet of the Due Process analysis appears undisputed, as Devis cannot argue a defect in notice. In assessing whether the minimum contacts required to fulfill the fairness test exist, the Court must examine the individual facts of each case. *Glumina Bank v. D.C. Diamond Corp., et. al.*, 259 Va. 312, 317 (2000).

Here Devis agreed to the jurisdiction of Virginia to protect his right to fees (A-25). Devis traveled to Virginia as Rodriguez's agent to attend a business meetings with a Virginia resident. Devis sent several tortious communications into Virginia between April 2000 and January 2004, in furtherance of the business conspiracy. Regarding the latter date, Judge Lee was advised in pleading and argument that Devis had assisted in filing a fraudulent Virginia Bar Complaint against Rodriguez.

Because a single business transaction can be sufficient to permit the exercise of jurisdiction under the Virginia long-arm statute, *Associate Financial Services v. McPeek*, 222 Va. 176, 179 (1981), the principal/agent contract with Rodriguez controlled by the Virginia, even if it is to be substantially performed outside of Virginia, is sufficient to constitute the transaction of business. *I.T. Sales v. Dry*, 222 Va. 6, 8 (1981). Thus for constitutional purposes, these facts amply satisfies the minimum contacts test.

Moreover, Virginia has an undisputable interest in providing its attorneys with a forum in which to litigate disputes arising under a Virginia Attorney's Lien, and in safeguarding its attorneys against fraud and other illegal practices.

III. JUDGE LEE ERRED IN DISMISSING THIS ACTION FOR BUSINESS CONSPIRACY AND NOT CONDUCTING THE DEMANDED JURY TRIAL.

"The function of our long-arm statute is to assert jurisdiction over nonresidents who engage in some purposeful activity in Virginia, to the extent permissible under the Due Process Clause of the Constitution of the United States." *Nan Ya Plastics Corp. U.S.A. v. DeSantis,*237 Va. 255, 259, 377 S.E.2d 388, 391, *cert. denied,* 492 U.S. 921 (1989); *Accord Peninsula Cruise, Inc. v. New River Yacht Sales, Inc.,*257 Va. 315, 319, 512 S.E.2d 560, 562 (1999).

Due process and equal protection of the laws that create and protect a Virginia attorney from the fraud of a client and his agent/local counsel, demands that given the Commonwealth has an undisputable interest in providing its attorneys with a forum in which to litigate disputes arising under a Virginia Attorney's Lien, and in safeguarding its attorneys against fraud and other illegal practices in furtherance of a Business Conspiracy, a jury trial is in the interest of justice.

The right of access to justice against Rodriguez's agent for fraud is fundamental in protecting his substantive property rights in his Virginia Attorney's Lien, *see Heinzman v. Fine, Fine, Legum & Fine,* 217Va. 958, 234 S.E.2d 282 (1977); *English & Smith v. Metzger*, 901 F.2d 36, 39 (4th Cir. 1990); *Katopodis v Liberian S/T Olympic Sun*, 282 F.Supp. 369 (E.D. Va. 1968).

As the U.S. Supreme Court has held, the Fourteenth Amendment includes, "the duty of every State to provide, in the administration of justice, for the redress of private wrongs." *Missouri Pacific Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

Specifically regarding allegations of a business conspiracy, to determine whether Devis engaged in some purposeful activity in Virginia and whether Devis had

sufficient minimum contacts within the Commonwealth, is normally a jury question of facts.

As explained by this Court in *Commercial Business Systems v. BellSouth*, 249 Va. 239 at 267-68 (1995),

> statutory conspiracy claim is a matter for determination by a jury. . . .whether a conspiracy caused the alleged damaged ordinarily is a question for a jury . . . . Ordinarily it is the function of a jury to determine whether and to what extent a plaintiff has been damaged.

In addition to the fact that Rodriguez never waived his right to a jury trial and specifically demanded a jury trial on all pleadings, as well as by timely requesting at all hearings and filing a separate motion for a jury trial. Therefore Rodriguez has a right under Virginia Constitution and Va Code, to the demanded trial by jury of each and every issue triable by jury. In fact given the facts in support of fraud, Rodriguez's right to a jury trial is "**inviolate.**"[6] *See Landcraft Co. v. Kincaid,* 220 Va. 865, 874, 263 S.E.2d 419, 425 (1980). *See also, Telco Communications vs. An Apple A Day Inc.,* 979 F. Supp. 404 (E.D. Va., 1997, Cachceris, J.).

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[6] The Supreme Court has confirmed that all doubts should be resolved in favor of jury trials in light of the strong federal policy favoring such trials and right under the Constitution. *Simler v. Conner*, 372 U.S. 221, 83 S.Ct. 609, 9 L.Ed2d 691 (1967). *See also Grafton Partners L.P. v. Surperio Court of Alameda County*, 36 Cal 4th 944, 116 P.3d 479 (2005)(court holding an "inviolate" right to jury trail under California Constitution-similar to Virginia Constitution Art. I Section 11).

Given that the equitable claims pursuant to the VA Attorney's Lien, and legal claims for tortious interference under VA Code, are joined in the same action, in this event, "there is a right to a jury trial on the legal claims which must not be infringed by trying the legal issues as incidental to the equitable ones or by a court trial of a common issue existing between the claims." *Ross v. Berhard* 396 U.S. 531, 90 S.Ct. 733 at 738 (1957). *See also* Sinclair, 2006 Guide at 200, otherwise prior non-jury trial of the equitable issues could infringe the right to jury trial on the legal issues because of the *collateral estoppel* or *res judicata* effect of prior judicial determination of issues common to the two set of claims. *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948 (1959).

To determine whether Devis engaged in some purposeful activity in Virginia and whether it had sufficient minimum contacts within the Commonwealth, it is a jury question of facts, pursuant to the limited jurisdiction set forth in VA Code § 8.01-428.A(ii), and the holding in *State Farm Mutual Automobile Insurance Company v. Christine B. Remley et al., supra.*, and *Commercial Business Systems v. BellSouth*, supra, and *Telco Communications, supra.*

Thus where the issue of jurisdiction is dependant upon a decision on the merits, the Judge Lee's decision was an abuse of discretion and reversible error in not permitting a jury trial of the facts on jurisdiction. *See Schramm v. Oakes*, 352 F.2d 143, 149 (10th Cir. 1965).

IV. BASED ON ITS CURRENT POLICY AGAINST *PRO HOC VICE* ATTORNEYS, THE FEDERAL COURTS HAVE UNLAWFULLY DEPRIVED RODRIGUEZ OF HIS SUBSTANTIVE PROPERTY RIGHTS WITHOUT DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS.

Since 1993, judicial policy in the 4th Circuit and the E. D. of Virginia has been to disfavor Rodriguez"s *pro hoc vice* practice by not according him protection of fees, *see Daccarett-Ghia v. U.S.*, 4th Cir. Ct. App. No. 93-1343 (Judge Ellis III), in violation of equal protection, *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272 (1985).

However, regarding the enforcement and protection of Rodriguez's VA Attorney's Lien-including for the providing of *pro hoc vice* legal services to non-resident Hispanics, the Supreme Court of Virginia's holding makes clear that the language of VA Code § 54.1-3932, is " . . . **broad and permits no interpretation limiting the benefits of the statute to Virginia lawyers. . . .**"(Emphasis added). *Hughes v. Cole,* 251 Va. 3 at 27, 465 S.E.2d 820 (1996).

> The law is clear that `when . . . an attorney employed under a contingent fee contract is discharged without just cause . . . the discharged attorney is entitled to a fee based upon *quantum merit* for services rendered prior to discharge and, as security for such fees, to the lien granted by [VA Code § 54.1-3932].'(citation omitted). *Hughes v. Cole* 251 Va. at 23.

Based on the clear reading of Va. Code § 54.1-3932, as well as controlling case law and the VA Legal Ethics Opinion of February 27, 1990, issued to Rodriguez permitting a suit for a business conspiracy to commit fraud to deprive his of his statutory property rights, Rodriguez has an inviolate right to recover the reasonable value of his services that he rendered for twelve years to SSA Entities based on *quantum merit*. *See Virginia Lawyer Register*, March 2003, Vol 51/No. 8, p. 13 ¶17, the Official Publication of the Virginia State Bar; VA Legal Ethics Opinion No.

1606 and No. 1766; *See also,* VA. Code § 54.1-3932; and *Heinzman v. Fine, Fine, Legum & Fine*, 217Va. 958, 234 S.E.2d 282 (1977). He also has a right to protect this property interest from a business conspiracy by his SSA Entities, SSA Lobbyist, and Devis as his agent/local counsel.

This inviolate right exists because Virginia has the undisputed interest in protecting Rodriguez's ability to be paid for *pro hoc vice* legal services rendered outside of Virginia–given that the Virginia State Bar supervises his professional conduct where ever his *pro hoc vice* practice takes him (A-25).

Therefore, there is no contrary interest to suggest that Virginia's public policies should not control based on equal protection and the Art. IV, sec. 2 of the Constitution, the "privileges and immunities clause," *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985). *See In the Matter of Istem, Inc., Respondent v. Chemical Bank Respondent, and Wilkie Farr Gallagher, Appellant,* 78 N.Y.2d 342, 581 N.E.2d 1042, 575 N.Y.S.2d 796 (1991). This is because, as stated in *Idefense Inc, et al. v. The Dick Tracy Group, Plc. Et al.*, 58 Va. Cir. 138 (2002)(Fairfax Cir., Hudson, J.), that,

> . . . [T]he Commonwealth has an interest in providing its citizens with a forum in which to litigate disputes arising from business ventures and in safeguarding its business community against fraud and other illegal acts.

However, review of all the proceedings and the unpublished orders of Fourth Circuit, Judge Lee and Judge Cachceris since December 2000, establish that they have disregarded the mandate of 28 U.S.C. § 2072, 28 U.S.C. § 1738, as well as the *Erie* doctrine, to act outside of their

judicial authority or capacity by disregarding both Rodriguez's Virginia statutory property right in his Virginia Attorney's Lien, and right to protect his business and profession, as well as his fundamental rights as a citizens of the United States and the Commonwealth of Virginia to a fair and impartial hearing.

To date based on this discriminatory treatment against Rodriguez's *pro hoc vice* practice he has been deprived of substantive property rights unique to having a Virginia statutory Attorney's Lien, VA Code § 54.1-3932:

First, his lien came into existence immediately upon making of the verbal and written contracts with SSA Entities. *Fary v. Aquino*, 218 Va. 889, 241 S.E. 2d 799 (1978); *Ruebush v. Funk*, 63 F.2d. 170 (4th Cir. 1933); *Tignor v. Parkison*, 729 F.2d. 977 (4th Cir. 1984).

Second, Rodriguez's Virginia Attorney's Lien makes him a party in interest in the contract litigation against Colombia. *Katopodis V. Liberian S/T Olympic Sun*, 282 F.Supp. 369 (E.D. Va 1968).

Third, his Virginia Attorney's Lien remains inchoate until judgement or any recovery is obtained, and cannot be defeated by later fraudulent transfer of assets by SSA Entities. *Montavon v. United States*, 864 F.Supp. 519 (E.D. Va. 1994).

Fourth, Rodriguez, being discharged is entitled to a fee based on *quantum merit* for the twelve years of service rendered for the period of September 15, 1988 to April 6, 2000. *Heinzman v. Fine, Fine, Legum & Fine*, 217Va. 958, 234 S.E.2d 282 (1977).

V. JUDGE LEE AND THE CIRCUIT COURT VIOLATED THEIR DUTY UNDER 18 U.S.C. §§ 4 AND 1001.

At the outset, as a factual bases to the allegation of the business conspiracy of fraud against both Rodriguez it was alleged (Complaint page 17 at 54-55), that the motive to conduct a business conspiracy against Rodriguez was to avoid disclosure of violations by SSA Entities, their Lobbyist Guy Vander Jagt and James Falk, as well as Davis of the Foreign Corrupt Practices Act, 15 U.S.C. ss 78a, 78n, 78t, 78dd-1, 78dd-2, 78ff (1988 & Supp v 1993)("FCPA").

In summary from 1988 until 1999, with the passage of Plan Colombia, SSA Entities successfully lobbied Congress and the Executive Branch to passage special legislation and conduct meetings to pressure the Government of Colombia. Suddenly once Congress passed funding to Colombia, a settlement was entered into, and Rodriguez was dismissed to prevent disclosure of the nature of the agreement transferring SSA Entities rights to 15 of the sunken treasure targets, allegedly in violation of the FCPA. To date no information has been provided under various Freedom of Information Act request regarding negotiation and the transferred interest in 15 Treasure targets.

In the instant action the record show for more than twelve years SAA Entities Lobbyist Defendant Guy Vander Jagt, petitioned and obtained the assistance the United States Government. Subsequently after negotiating a settlement and transferring title to its assets SSA Entities in June 2002, mysteriously dissolved, and disappeared. Suddenly in January 2004, SSA Entities filed false statements with Virginia Bar in their complaint against Rodriguez.

Despite these allegations of FCPA violations, Judge Lee and the Circuit Court have refused to permit discovery and have dismissed repeatedly the action based on contract law, disregarding the statutory bases of Rodriguez's claim. However, because this allegation of fraud has been committed in violation of the FCPA, pursuant to §§ 18 U.S.C. 4 and 1001, both Judge Lee and the Fourth Circuit must permit the case to forward, investigate, and act accordingly.

Although there is no case law on the issue of the obstructing of justice under the FCPA, by denying access to the court to petition the government regarding criminal activity and for an impartial and meaningful hearing, it is clear from the wording of 18 U.S.C. §§ 4, and 1001,that compliance is not a prerogative of the courts under these criminal statutes.

VI. NONCOMPLIANCE WITH 28 U.S.C. § 455.

Access to an impartial court, Chief Justice Marshall declared in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), is,

> [T]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

The U.S. Supreme Court has left no doubt that access to impartial court is a fundamental right guaranteed by the U.S. Constitution to secure rights under: (a) The First Amendment Petition Clause - *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983); (b) The Fifth Amendment Due Process Clause - *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335 (1985); (c) The

Fourteenth Amendment Equal Protection Clause - *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987); and, (d) The Fourteenth Amendment Due Process Clause - *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974); *Terry E. Butera v. District of Columbia et al.*, 235 F.3d 637 (2001); *see Christopher v. Harbury*, 536 U.S. 403, Sct. 01-394 (2002).

Directly on point as to the right of action against Devis, is Rodriguez's right of access to justice against the fraud. It is fundamental in protecting his property rights in his Virginia Attorney's Lien. The Supreme court has held that the Fourteenth Amendment includes, "the duty of every State to provide, in the administration of justice, for the redress of private wrongs." *Missouri Pacific Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

Obviously given the refusal of Judge Lee and the Circuit Court in not complying the mandate of the General Assembly of Virginia as to the cause of action for a business conspiracy, and Congress mandate under the Rules Enabling Act, more impartial judges have to be selected under 28 U.S.C. § 455.

The force of Congress' mandate to assure access to an impartial court is expressed in 28 U.S.C. §455(e) which states: "No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)." Clearly, Congress does not want justices hearing cases to which their impartiality is questioned or they are a party.

Disqualification is governed by federal statute found at 28 U.S.C. §455(a) and (b), which mandates this justice and judge, shall disqualify themselves when either their impartiality is placed at issue or when they are a party to the proceeding.

The *Rule of Necessity* as the factual predicate present in *United States v. Will*, 449 U.S. 200, 213 (1980), is not present here. This is because in *Will*, this Court found that:

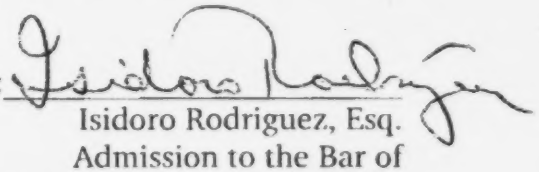
> In federal courts generally, when an individual judge is disqualified from a particular case by reason of § 455, the disqualified judge simply steps aside and allows the normal administrative processes of the court to assign the case to another judge not disqualified. *Id.* at 212.

Given the procedural history of this action, and the related action which all the judges of the 4th Circuit are defendants, under 28 U.S.C. § 291, circuit judge out side of the 4th Circuit must have been appointed to hear this action. Since reassignment was not done, the order are void pursuant to the *void order doctrine*.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

By: 

Isidoro Rodriguez, Esq.
Admission to the Bar of
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Filed: March 22, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 052163

(CA-02-1523-GBL)

ISIDORO RODRIGUEZ, Esq.,

Plaintiff-Appellant,

versus

DANILO DEVIS PERERIA

Defendant-Appellee

and

HFP INCORPORATED, General Partner; IOTA PARTNERS; ARMADA COMPANY, General Partner; SEA SEARCH ARMADA; DOE ENTITIES 1-6; MURDOCK & COMPANY; EDRIS E. HARBESTON; JACK HARBESTON; JEROME BARON, DAVE LAROCQUE; DON MIDDLEBROOK; ED CARPENTER; JOHN DOE 1-20,

Defendants.

ORDER

Appellant has filed a motion for stay of mandate pending application to the United States Supreme Court for writ of certiorari.

The Court denies the motion.

For the Court -By Direction
/s/ Patricia S. Connor
Clerk

Filed: March 21, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 052163
(CA-02-1523-GBL)

ISIDORO RODRIGUEZ, Esq.,

Plaintiff-Appellant,

versus

DANILO DEVIS PERERIA

Defendant-Appellee

and

HFP INCORPORATED, General Partner; IOTA PARTNERS; ARMADA COMPANY, General Partner; SEA SEARCH ARMADA; DOE ENTITIES 1-6; MURDOCK & COMPANY; EDRIS E. HARBESTON; JACK HARBESTON; JEROME BARON, DAVE LAROCQUE; DON MIDDLEBROOK; ED CARPENTER; JOHN DOE 1-20,

Defendants.

MANDATE

The judgment of this Court, entered 1/24/06, takes effect this date.

A certified copy of this Court's judgment and a copy of its decision are issued to the district court and constitute the mandate of this Court.

/s/Patricia S. Connor

CLERK

Filed: March 13, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 052163 (CA-02-1523-GBL)

ISIDORO RODRIGUEZ, Esq.,

Plaintiff-Appellant,

versus

DANILO DEVIS PERERIA

Defendant-Appellee

and

HFP INCORPORATED, General Partner; IOTA PARTNERS; ARMADA COMPANY, General Partner; SEA SEARCH ARMADA; DOE ENTITIES 1-6; MURDOCK & COMPANY; EDRIS E. HARBESTON; JACK HARBESTON; JEROME BARON, DAVE LAROCQUE; DON MIDDLEBROOK; ED CARPENTER; JOHN DOE 1-20,

Defendants.

On Petition for Rehearing En Bane

The appellant's petition for rehearing en bane was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en bane,

IT IS ORDERED that the petition for rehearing en bane is denied.

Entered for a panel composed of Judge Traxler, Judge Wilkinson, and Judge Shedd.

For the Court,
/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 052163

ISIDORO RODRIGUEZ, Esq.,

Plaintiff-Appellant,

versus

DANILO DEVIS PERERIA

Defendant-Appellee

and

HFP INCORPORATED, General Partner; IOTA PARTNERS; ARMADA COMPANY, General Partner; SEA SEARCH ARMADA; DOE ENTITIES 1-6; MURDOCK & COMPANY; EDRIS E. HARBESTON; JACK HARBESTON; JEROME BARON, DAVE LAROCQUE; DON MIDDLEBROOK; ED CARPENTER; JOHN DOE 1-20,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (CA-02-1523-GBL)

Submitted: January 19, 2006 Decided: January 24, 2006

Before WILKINSON, TRAXLER, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Isidoro Rodriguez, Appellant Se. Danilo Devis Pereira,

Appellee Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Isidoro Rodriguez appeals a district amended final judgment adopting in part the magistrate judge's report and recommendation and dismissing without prejudice his motion for a default judgment. We have reviewed the record and the district court's order and affirm for the reasons of the district court. See Rodriquez v. Pereira, No. CA-02-1523-GBL (E.D. Va. filed Sept. 19, 2005; entered Sept. 21, 2005). We deny Rodriguez's motions to disqualify the judges of this circuit court, for the issuance of a scheduling order and for permission to file a formal brief. We also deny the motion for oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)
	)
Plaintiff,	)
	)
v.	)Civil No. 02-1523-A
	)
HPF, INC., *et al.*	)
	)
Defendants.	)

Amended Final Judgment

THIS MATTER is before the Court on Plaintiff's Motions for Reconsideration and Correct Official Docket Sheet Under Rule 59 (e), or in the Alternative Motion to set Aside Under Rule 59 (e) and Rule 60.

After consideration of Plaintiff's motions and Memorandum in Support, it is hereby

ORDERED that the Final Judgment is Amended as follows: the docket entry for the Court's Judgment Order issued on July 22, 2005, be amended to reflect that the order was issued on August 25, 2005. It is further

ORDERED that this Court' s Judgment Order, issued on July 22, 2005, be amended to reflect the changes made herein:

THIS MATTER is before the Court on the February 11, 2005 Report and Recommendation of Magistrate Judge Barry R. Poretz regarding Plaintiff Isidoro Rodriguez's

Motion for Default Judgment against Defendant Danilo Devis Pereira. Judge Poretz recommends that the Court dismiss the plaintiff's Motion for Default Judgment with prejudice for lack of personal jurisdiction. Plaintiff filed objections on February 23, 2005.

On October 15, 2002, Plaintiff Isidoro Rodriguez filed a Complaint against HFP, Inc., Iota Partners L,P., Armada Company Sea Search-Armada, Doe Entities 1-6, Murdoch & Company, Edris E.Harbeston, Jack Harbeston, Jerome Barron, Dave Laroque, Don Middlebrook, Ed Carpenter, Danilo Devis Pereira, and John Does 1-20. Plaintiff also sought *inter alia* to enforce a Virginia State Bar legal ethics opinion under the Full Faith and Credit Act and a Virginia attorney's lien. Plaintiff additionally filed a Motion Pursuant to the U.S. and Virginia Constitutions, as well as 28 U.S.C. § 1738, for the Certification of Questions to the Supreme Court of Virginia seeking enforcement of the Attorney's Lien, and to Protect Said Lien from a Business Conspiracy and Tortious Interference. Judge Lee denied Plaintiff's motion for a certified question, and granted Defendants' Motions to Dismiss for Lack of Personal Jurisdiction. By a separate order Judge Lee held that this Court lacked personal jurisdiction over all of the Defendants, including Danilo Devis Pereira. The U.S. Court of Appeals for the Fourth Circuit affirmed Judge Lee's decision. *Rodriguez v. HFP Inc.*, 77 Fed. Appx. 663, 2003 WL 22321038, *1 (4th cir. 2003). The U.S. Supreme Court subsequently denied Plaintiff's petition for certiorari. 541 U.S. 903 (2004) (No.03-971) .

On January 12, 2005, Plaintiff filed a Motion for Default Judgment against Danilo Devis Pereira. On

February 8, 2005, Judge Lee assigned the case to Magistrate Judge Barry R. Poretz pursuant to 28 U.S.C. Section 636(b), and Federal Rule of Civil Procedure 72(b). Federal Rule of Civil Procedure 72(b) provides that a magistrate judge may hear a dispositive motion, without the consent of the parties, and recommend the disposition of the matter to a district judge. FED. R. CIV. P. 72(b). The Magistrate Judge found that this Court lacks the jurisdiction to hear Plaintiff's Motion for Pereira because plaintiff's Complaint had been previously dismissed by the Court. Because Plaintiff does not provide any new facts that affect the Court's previous holding that the Court lack's personal jurisdiction over Defendant Danilo Devis Pereira, this Court adopts Judge Poretz's Report and Recommendation, in part.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Default Judgment against Danilo Devis Pereira is DISMISSED WITHOUT PREJUDICE. Plaintiff's objections are OVERRULED.

The Clerk is DIRECTED to ENTER JUDGMENT pursuant to Federal Rule of Civil Procedure 55.

The Clerk is directed to forward a copy of this Order to counsel of record.

ENTERED this 19 th day of September, 2005.

/s/

Gerald Bruce Lee
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 02-1523-A
	)	
HFP, INC., *et al.*	)	
	)	
Defendants.	)	

ORDER

THIS MATTER is before the Court on Plaintiff Isidoro Rodriguez's motion for certification of questions to the Virginia Supreme Court and on Defendants HFP, Inc.'s, IOTA Partners L.P.'s, Edris E. Harbeston's, Jack Harbeston's, and Jerome Barron's motions o dismiss for lack of personal jurisdiction. On December 21, 2000, Judge James C. Cachceris granted Defendants' motion to dismiss for lack of jurisdiction;[1] this is the second iteration of this case.

Plaintiff does not provide any new facts that affect the Court's previous lack of personal jurisdiction over Defendants; therefore he Court adopts Judge Cacheris's previous findings of fact and conclusions of law when he

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[1]See Rodriguez v. Harbeston, Ca No. 00-1523-A (E.D. Va. December 21, 2000)

granted the Defendants' motions to dismiss for lack of personal jurisdiction on December 21, 2002.[2] From Judge Cacheris's previous findings of fact and conclusions of law and for the reasons stated in open court on December 13, 2002, the Court concludes that it lacks personal jurisdiction over Defendants HFP, Inc., IOTA Partners L.P., Edris E. Harbeston, Jack Harbeston, and Jerome Barron; the Court dismisses the complaint as to these Defendants. Furthermore, Plaintiff also fails to allege any new facts hat affect this Court's earlier decision hat it lacked jurisdiction over Defendant Danilo Devis Pereira.[3] thus, the Court dismisses the complaint against Defendant Pereira.

In addition, the Court finds that personal jurisdiction over the remaining Defendants is improper in this Court. Plaintiff fails to plead any facts which confer personal jurisdiction, in this Court, under Virginia's long-arm statute, Va. Code §8.01-328.1(A). Moreover, under the facts set forth in the Complaint, any assertion of personal jurisdiction over the named Defendants would offend due process. The Court finds that it lacks personal jurisdiction over the remaining Defendants. The Court further finds that amendment o the pleadings will not cure the jurisdictional deficiency.

Concluding that the Court lacks personal jurisdiction over Defendants, the Court denies Plaintiff's motion for certification of question to the Virginia Supreme Court. The

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[2]See id.

[3]See Rodriguez v. Pereira, Ca No. 00-1523 (E.D. Va. June 5, 2001)

Court dismisses he complaint as to all Defendants. Therefore, there is no case or controversy, and the Court lacks the power, under the United Sates Constitution, to render advisory opinions[4] and to certify a question to the Virginia Supreme Court. Therefore, it is hereby

ORDERED that Defendants HFP, Inc.'s, IOTA Partners L.P.'s, Edris E. Harbeston's, Jack Harbeston's, and Jerome Barron's Motions to Dismiss for Lack of Personal Jurisdiction are GRANTED,

ORDERED that Plaintiff Isidoro Rodriguez's claims against the remaining Defendants are DISMISSED WITHOUT PREJUDICE. It is also ORDERED that Plaintiff is DENIED LEAVE TO AMEND THE COMPLAINT. Furthermore, it is

ORDERED that Plaintiff Isidoro Rodriguez's Motion for Certification of Questions to the Virginia Supreme Court is DENIED.

The Clerk is directed to forward a copy of this Order to counsel.

Entered this 16th day of December, 2002.

/S/
Gerald Bruce Lee
United States District Judge

Alexandria, Virginia
12/16/02

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ISIDORO RODRIGUEZ	)	
	)	
	)	
Plaintiff,	)	Civil No 02-1523-A
	)	
vs.	)	December 13, 2002
	)	
HFP, INC., ET AL.,	)	
	)	
Defendants.	)	

REPORTER'S TRANSCRIPT
MOTIONS HEARING

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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McLean, VA 22101

OFFICIAL COURT REPORTER:
RENECIA A. SMITH-WILSON, RMR

MR. RODRIGUEZ: May it please the Court. This is a case of first impression. This is not a case dealing with personal jurisdiction based on contracts. It is a case dealing with personal jurisdiction to enforce the Virginia State Bar and the Virginia law on enforcement of the Virginia attorney's lien.

I would–I'm at a disadvantage because my opposing counsel failed to file any reply briefs to my numerous briefs that touched on all of the legal points and only focused on the issue of contracts.

Again, this is not a contract's case. This is–and that's why 1738 comes into play because of the substantive law of Virginia where the Supreme Court of Virginia said there is not limitations to enforce a Virginia attorney's lien.

Now, the distinguishing factor of this case is I was retained to provide pro hac vice {sic} litigation service, fiduciary and litigation services to the largest contact suit by American citizens again a foreign power.

Because nobody else in Columbia or any other lawyer in the United States was willing to take on the litigation.

And because of the political clout of the parties, the defendants, they were able to get through a former Congressman, Mr. Vanderjack {sic}, and insertion by the –the State Department to see if I would be willing to take the case.

At the time, I had just left a corporate position as general counsel in creation of a coal mine down in Colombia and was in the process of determining where I

was going to set up an office. And I was on a businessman's VISA and still a resident of Virginia when I was down in Columbia when I was contacted.

And because of my –

THE COURT: From the standpoint of the jurisdictional analysis, your claim here has to be analyzed with respect to Virginia Long-Arm Statute. Help me with your view of why the Virginia Long-Arm Statute permits exercise of personal jurisdiction in this case.

MR. RODRIGUEZ: Because as I stated both before Judge Cachceris and as well as I stated in all the documents as well as the former complaint in this case, I was retained because I was a U.S. citizen and a lawyer, a U.S. lawyer and in this instance, a lawyer in Virginia. And that's why it made a difference.

If I was a lawyer in Washington or in Idaho which had similar statutes with regard to protection or their respective attorney's lien, that's why I was retained.

And that is the underpinning of jurisdiction for this Court because this Court sits as a Virginia Supreme Court.

And the question is will Virginia provide the same protection to a Virginia attorney providing pro hac vice services as compared to a Virginia attorney who is sitting here in Alexandria?

And there is a problem. If it says no, a Virginia attorney providing pro hac vice service is different form a Virginia attorney, there is an equal protection argument.

THE COURT: I've read that in your brief and I—and while I understand what you said there, I want to focus in on just the Virginia Long-Arm Statute and the constitutional principles. And you said you argued this to Judge Cachceris and so I'm trying to make sure—

. . .

THE COURT: Okay. All right. Well, I have now asked you the questions that I have with respect to personal jurisdiction.

Unless there is something more that you want to say that's not in your brief or something that you believe my questions have raised, I've now asked the questions I have of you. Thank you.

Mr. Feord, anything further?

MR. FEORD: Your Honor, no, thank you.

THE COURT: All right. Let the record reflect this is the matter of Isidoro Rodriguez, Esquire versus HFP and others. And the matter is before the Court on the defendant Harbeston's and Barron's motion to dismiss for lack of personal jurisdiction under Virginia Long-Arm Statute.

The Court has considered the arguments and the submissions of both sides and renders the following ruling in connection with the case.

I think the question presented is whether or not the plaintiff has facts which would justify an extension of personal jurisdiction over Ms. Harbeston, Mr. Harbeston or Mr. Barron under the Virginia Long-Arm Statute and consistent with due process.

It seems to me that persons I enumerated are not Virginia residents and that the allegations thee of the complaint seem to focus in on Mr. Rodriguez's status as an attorney who is admitted to practice as a Virginia lawyer and who secured a Virginia bar ethics opinion which in my view, the ethics opinion really addresses whether or not it is ethical for a lawyer to bring a lawsuit against his former client to collect fees to secure a claim for an attorney's lien for services rendered.

I have now reviewed the submissions of both sides as well as the ruling of Judge Cachceris on December 21,

2000. And it seems to me that the facts of this case are hard to distinguish. That is to say, it's and for me to distinguish factually between this lawsuit and the case that was before Judge Cachceris in 00-1523-A.

And I also find it difficult to find a nuance in plaintiff's argument that would establish sufficient jurisdiction under 8.01 328.1 (a)(3) or (a)(4) because it seems to me that this case stems form Mr. Rodriguez being retained to perform legal services in Colombia for clients who engaged him in Columbia and to pursue a claim against them in Columbia courts as well as acts as a fiduciary in Columbia.

Mr. Rodriguez's arguments is that he was engaged specifically because he is an active attorney licensed form Virginia and that the clients believed that his licensing by the Commonwealth of Virginia would insure that he would adhere to high ethical standards and also that the state bar would supervise in some way his activities as a fiduciary.

I find that this affiliation with the Virginia State Bar, even the fact that he's a member of a the bar is insignificant for purposes of trying to ascertain whether there is a basis to exercise personal jurisdiction under the Long-Arm Statutes and consistent with due process.

It seems to me that the facts as set forth basically demonstrate that Mr. Rodriguez was in Colombia. He was working in Columbia, not Virginia. The litigation work had to do the Republic of Colombia and the courts there. The fiduciary work had to do with the activities in Columbia.

I don't see any contact or any activities that occurred here in Virginia or nay suggestion that even if there were a conspiracy between these former clients not to pay Mr. Rodriguez's bill, that that somehow is causing a tort in Virginia that would be sufficient under the Long-Arm

Statute.

I conclude that for reasons that I will adopt Judge Cachceris' ruling and note that the fourth Circuit affirmed that as well. And I may supplement this ruling with some additional authorities. But it seems to me that under the case law, that there is just no basis here to exercise personal jurisdiction under the Long-Arm Statute.

It would, I thing defy due process to suggest that under these facts that the fact that the person employed as a lawyer in another county and that the person is not paid, that they would have a claim that they could bring for collection of attorney's fees in Virginia merely by virtue of their status as an attorney would extend due process well beyond the parameters of the Constitution and certainly well beyond the Virginia Long-Arm Statute.

I note that the –even the contract of October 28, 1988 is on Mr. Rodriguez's stationary in Barranquilla, Columbia where his office was located at the time.

I just don't see. I've tried, Mr. Rodriguez, to see it your way, and I've tried to review all your cases and your submissions.

We have an honest difference about the law. And for those reasons, I will dismiss the action at this time.

Exception is preserved. Thank you.

MR. RODRIGUEZ: thank you, Your Honor.

MR. PLEDGER: Your Honor, might I ask the Court for clarification. We had filed on behalf of defendant Iota Partners and HFP, Inc. motions to dismiss o the same grounds which were also set for—noticed for hearing today.

THE COURT: Oh. Your briefs didn't say—have all those names in it, and it would apply to the defendants who joined the motion which included Jack Harbeston, HFP, Incorporated, Iota Partners, LP and Jamome Barron.

MR. PLEDGER: There is Iota HFP, Barron and the tow Harbestons. And we've filed motions and briefs on all five of those defendants.

THE COURT: Well, all the defendants, it would—the motion is granted.

MR. PLEDGER: Thank you, Your Honor.

THE COURT: Thank you.

MR. RODRIGUEZ: One point of clarification your Honor. I want to make sure you're denying the motion for certification by the Virginia Supreme Court on the issue of the statute.

THE COURT: There is no case to certify an issue on it in my view. If I don't have personal jurisdiction, I don't have jurisdiction to do anything. That would be advisory—for me to ask the Supreme Court to render an opinion would be advisory. And Article Three courts can't ask advisory opinions.

MR. RODRIGUEZ: Thank you, Your Honor.

MR. FEORD: Thank you.

MR. PLEDGER: Thank you. Good day, Your Honor. Have a nice Holiday.

THE COURT: Your all take care.

(thereupon, the proceeding concluded at 10:33 a.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ISIDORO RODRIGUEZ	)	
	)	
Plaintiff,	)	Civil No 00-1523-A
	)	
vs.	)	December 20, 2000
	)	
JACK HARBESTON , ET AL.,	)	
	)	
Defendants.	)	

HEARING ON MOTION

Before: James C. Cachceris, Judge

APPEARANCES:
Isidoro Rodriguez, Pro se
R. Harrison Pledger, Jr. Counsel for Defendants
COURT REPORTER: Norman B. Linnell OCR-USDC/EDVA

THE COURT: Okay. This matter is before the Court on defendants' motions to dismiss for lack of personal jurisdiction. It's all the defendants, basically, except Mr. Devis.

The defendants in this matter were engaged in deep-sea exploration aimed at locating and salvaging the wreck of the galleon San Jose, which sunk off the coast of the Republic of Colombia in 1707. The ship is believed to carry at least two billion in treasure and possibly much more.

The plaintiff, Mr. Rodriguez, is a U.S. citizen, a member of the Virginia State Bar, and was contracted while he was in Colombia and retained with his law partner, Danilo Devis Pereira, P-e-r-e-I-r-a, to perform certain legal tasks in Colombia on behalf of the other defendants, including filing suit in Colombia court against the Colombian government. The plaintiff alleges he was not fully paid for his services.

The defendants filing motions to dismiss are Sea Search Armada, (SSA), a limited partnership organized under the laws of the Caymand Islands, which holds title to the San Jose; Armada Company, also organized under the laws of he Cayman Island and the managing general partner of SSA; IOTA Partners, an Idaho limited partnership selling investment shares in SSA's interests in the San Jose; and Jack Harbeston, H-A-R-B-E-S-T-O-N, a resident of the state of Washington, who is managing director of SSA, president of Armada and general partner of IOTA Partners.

A 12(b)(2) motion to dismiss states the Court lacks sufficient jurisdiction over the defendant's person to exercise judicial power over him. Where a nonresident over whom jurisdiction is asserted has established certain minimum contacts with a forum, such that requiring him to defend interests in the forum would not offend traditional notions of fair play and substantial justice, and where such person has purposely availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of state laws, jurisdiction will be upheld. See Peanut Corporation of America versus Hollywood Brands Inc., 696 F.2d 311, 314, Fourth Circuit, 1982 case.

The Court makes a two fold inquire into the validity of an assertion of in personam jurisdiction over nonresident

defendant. Jurisdiction is proper only if, one, a statue statute provides authority for the assertion of jurisdiction and two, the assertion of jurisdiction under the particular facts does not offend the due process clause of the Fourteenth Amendment to the United States Constitution. August v. HBA Life Insurance Company, 734 F.2d 168, 170 Fourth Circuit, 1984.

Virginia has described its Long Arm Statute, Virginia code 8.91-328.1, as asserting in personam jurisdiction to the full extent permitted by due process. Danville Plywood Corp. v. Plain & Fancy Kitchen, Inc., 218 Virginia 533, 238 S.E.2d 800, 802, 1977 case.

And then the Long Arm Statute provided a number of situation such as personal jurisdiction over a person who acts directly by an agent so to cause –to a cause of action arising form the person transacting any business in the Commonwealth; tow contracting to supply services or things in the Commonwealth; three causing tortuous injury by an act or omission in this Commonwealth; four, causing tortuous injury in this Commonwealth by an act or omission outside the Commonwealth if he regularly does or solicits business, or engages in any other substantial course of conduct, or derives substantial revenue form good used or consumed or services rendered in this Commonwealth.

When jurisdiction over a person is based solely upon this section, only a cause of action arising form acts enumerated in this section may be asserted against him. That is Code Section 8.01-328.1 (2000).

The burden is on the plaintiff to show by a preponderance of the evidence that the defendants' acts placed them within the reach of the Long Arm Statute. Marshall Exports, Inc, v. Phillips , 507 F.2d 47, page 49 Fourth Circuit, 1974.

Mr. Rodriguez alleges that defendant Harbeston, acting on behalf of defendant Armada, later ratified his original agreement with SSA. However, none of these contracting actions took place in Virginia.

Mr. Rodriguez does not allege that any defendant regularly transacted business in Virginia or contract to supply things or services in Virginia.

The plaintiff Rodriguez contends the defendants chose him to conduct their affairs in Colombia precisely because he is a member of the Virginia Bar. The complaint is inconsistent on this point.

Defendant SSA had apparently had a prior negative experience with a Colombian attorney, so it sought to retain a member of a U.S. state Bar with the attendant ethics requirements.

Mr. Rodriguez' complaint observes that the Commercial Counsel for the United States Embassy in Bogota, Colombia contacted him after learning of defendant SSA was interested in securing the services of, quote, an active licensed attorney from the United States, unquote, not specifically from Virginia.

Mr. Rodriguez further alleges that the U.S. Commercial Counsel's recommendation of him to defendant SSA partly is because he was a member of the Virginia State Bar. But this obviously does not mean defendant had such a specific requirement.

Moreover, even if defendant choose to retain Mr. Rodriguez because of his Virginia State Bar affiliation, this alone is not sufficient connection to Virginia to establish this Court's personal jurisdiction over defendants under the Long Arm Statute.

As noted above, the defendants did not transact any business in the Commonwealth, nor did they contact to

supply services or things in Virginia, nor do they regularly transact business in Virginia.

Mr. Rodriguez was contacted by defendant Harbeston while Mr. Rodriguez was in Colombia, where he has an office, not in Virginia. Any litigation work to be performed by Mr. Rodriguez related to the Republic of Colombia, not the Commonwealth of Virginia.

Further, the defendant have not caused tortuous injury by any act or omission in Virginia because their contacts with Mr. Rodriguez have all occurred outside of Virginia, either in the Republic of Colombia, Idaho, Seattle, Miami, or Washington, D.C.

There is no nexus to the Eastern District of Virginia beyond the bare allegations that the defendants selected Mr. Rodriguez because of his Virginia State Bar membership. This is not sufficient under the Long Arm Statute

Again, the plaintiff bears the burden or defeating a motion under Rule 12(b)(2). Mr. Rodriguez has not shown by a preponderance of the evidence that the defendants selected him to represent them in Colombia because he was a member of the Virginia State Bar as opposed to some other official Untied States Bar association.

And even if Mr. Rodriguez had established that connection, it would be too tenuous a link to Virginia to allow this court to exercise authority over the defendants with the limits of the due process clause.

For the foregoing reasons, defendants ' motions are granted.

And also in light of the court's ruling, the defendant's motion for sanctions is denied as moot. So, you won't have to come back tomorrow.

Okay. Thank you very much.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ISIDORO RODRIGUEZ, ESQ.	)
	)
Plaintiff,	)
	)
v.	)Case No CA-001523-A
	)
JACK HARBESTON, ET AL.	)
	)
Defendants.	)

ORDER

For the reasons stated in open Court, it is hereby ORDERED that:

1. The Motions to Dismiss of Defendants Jack Harbeston, Sea Search Armada, Armada Company, and Iota Partners are GRANTED without prejudice;

2. Plaintiff's Motion for Sanctions under Rule 11 is DENIED as moot;

3. the action against Defendant Danilo Devis Pereira remains; and

4. the Clerk shall forward copies of this Order to all parties and counsel of record.

December 21st, 2000
Alexandria, Virginia

_____/S/_____
Judge J. Cachceris

[SEAL]

50 Years Public Service
Virginia State Bar
1938-1988
VIRGINIA STATE BAR
Tenth Floor, Ross Building, 301 East Main Street
Richmond, Virginia 2319 (804)786-2061

(804)736-5966 (Voice/TDD)

STANDING COMMITTEE ON LEGAL ETHICS

February 27; 1990
PERSONAL AND CONFIDENTIAL

Isidoro Rodriguez C., Esquire
Calle 84 No. 56-51
Piso 2, Oficina 4
Barranquilla, Colombia S.A.

Re: Legal Ethics Opinion # 1325

Dear Mr. Rodriguez:

I am writing in response to your letter dated January 3, 1990, requesting an informal advisory opinion from the Virginia State Bar Standing Committee on the Legal ethics ("committee").

You have advised that, although you are a member of the Virginia State Bar, you reside and practice in a South American country. You further indicate that you entered into an agreement, which was executed in Idaho, to

represent a foreign corporation in the negotiation, settlement, and/or litigation against a foreign government resulting from the corporation's claim as finder of a shipwreck which contained an estimated $3 billion in treasure. The agreement provided for an hourly fee rate, costs, and monthly detailed invoices and was affirmed by the corporation's Board of Directors which also named you as Legal Representative for the corporation. You have described for the committee that a Legal Representative In the country in which you practice is distinct from an attorney at law and is the commercial. representative for the company in that country with all of the corporate powers of the Board of Directors and all, of the potential individual liability. Furthermore, such a Legal Representative is not required to be an attorney at law. Subsequent to those corporate actions, you were authorized to bring a legal action against the foreign government and you authorized your then-law partner, which partnership has subsequently been dissolved, to file the suit as Attorney of Record. The facts you have provided indicate that the suit was filed shortly after you authorized your partner to do so.

You indicate that, although much time has been expended on the case and the corporation repeatedly expressed satisfaction with the work being performed by your firm, the corporation has failed to comply with its contractual agreement to pay invoices after they were presented. Specifically, the corporation agreed to pay $10,000 approximately two months after suit was filed and an additional $50,000 within 30 days thereafter. The first payment ($10,000) was made as scheduled, but no further payments have been made by the corporation. Subsequent

to that first payment, the corporation requested a contingent fee agreement be submitted for consideration; such a contract was prepared and submitted, but the corporation has not responded.

In addition to the failure to pay fees, you indicate that the corporation, without your knowledge, sent a defamatory letter against the foreign government which then prepared an official protest to the United States Embassy. You indicate that the letter accused the government and unnamed officials of
criminal acts, subjecting you, as the corporation's Legal Representative, to civil liability and both you and your former law partner to physical danger.

As a result of both issues, failure to pay fees and costs owed and the defamatory latter, you requested that the corporation retain a new Legal representative and a new attorney. You indicate that to date you have not received any response from the corporation's Board of Directors.

Finally, you advise that under the law and professional norms of the foreign government, your former lev partner has a right to unilaterally and voluntarily withdraw from the litigation, without any requirement to seek permission of the trial court. You indicate that he may also file a civil suit against the corporation for monies owed during or after litigation. Your former partner has not exercised those rights pending your receipt of this informal advisory opinion.

You have asked that the committee opine as to the propriety of your renunciation of your fiduciary appointment as Legal

Representative to the corporation in view of the non-payment of costs and fees owed and of the defamatory letter sent by the corporation to the foreign government. You have further inquired as to the propriety of your instituting suit against the corporation for their non-payment of fees and costs owed.

The appropriate and controlling rules relative to your questions are DR l-102(A)(4) which prohibits a lawyer from engaging "in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on [the] lawyer's fitness to practice law"; DR 2-l08(B)(2, 3, and 4) which proscribe the conditions which permit a lawyer to withdraw from representing a client; DR 2—108©) which directs that counsel of record in a court proceeding may not withdraw except by leave of court after notice to the client of the time and place of a motion for leave to withdraw; and DR1-102(B) which instructs that a lawyer admitted to practice in Virginia is subject to the Virginia Code of Professional Responsibility although engaged In practice elsewhere, unless disciplinary rules of the foreign jurisdiction permit the activity [emphasis added].

The committee is of the opinion that the provisions of DR l-l02(A)4) embrace far more than an attorney's conduct in the context of an attorney/client relationship. Thus, the committee opines that when an attorney assumes the responsibility of acting as a fiduciary and violates his or her duty in a manner that would justify disciplinary action had the relationship been that of attorney/client, the attorney may be properly disciplined pursuant to the Code of Professional Responsibility. The committee thus specifically adopts the conclusions reached in ABA Formal Opinion 336.

See also: State. v Freeman, 229 Kan. 639, 629 P.2d 716 (1981); and Committee on Professional Ethics v. Gross, 322 N.V2d 82 (Iowa 1982).

Virginia Disciplinary Rule 2-108(B), subsections (2), (3), and (4), directs that a lawyer may withdraw from representing a client if (2) the client persists in a course of conduct involving the lawyer's services that the lawyer reasonably believes is illegal or unjust; (3) the client fails to fulfill an obligation to the lawyer regarding the lawyer's services and such failure continues after reasonable notice to the client; or (4) the representation
will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. The committee is of the opinion that, under the facts you have provided, it would n6t be improper to move to withdraw as Legal Representative for the corporation. See also LEO #974. The committee understands, however, from your recitation of the facts, that such permission of the court is not required in the foreign country in which you practice. Under those circumstances, the committee directs your attention to
DR 1-102(B) which, as noted above, would control. Therefore, if the professional norms in that country permit unilateral and voluntary withdrawal from representation without authorization by the court, it would not be improper for you to act accordingly.

The committee has earlier opined that there is no disciplinary rule ethically prohibiting an attorney from bringing an action against his client for past-due attorney's fees end costs. See LEOs #974 and 995. Guidance I available under Ethical Consideration 2-25 which urges that

a lawyer should not sue a [current] client for a fee unless necessary to prevent fraud or gross imposition by the client. See LEO 11117. But see LEOs #1230 and 1257.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

Very truly yours,
Kathleen O'Brien

Encl.
cc: C. Torrence Armstrong, Esquire
Willard M. Robinson, Jr., Esquire
Susan B. Spielberg, Esquire

U.S. AND VIRGINIA CONSTITUTION, FEDERAL STATUTES AND VIRGINIA STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION, AMENDMENT V.

Provides in pertinent part, that no person shall "be deprived of . . . property, without due process of law."

U.S. CONSTITUTION, AMENDMENT VII.

Provides that "[i]n suits at common law, . . . , the right of trial by jury shall be preserved . . . ."

CONSTITUTION OF VIRGINIA, SECTION 11. DUE PROCESS OF LAW; OBLIGATION OF CONTRACTS; . . . ; JURY TRIAL IN CIVIL CASES.

That no person shall be deprived of his . . . property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, . .

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred . . . .

FULL FAITH AND CREDIT FEDERAL STATUTE

28 U.S.C.A. § 1738 (West 2000), provides in pertinent part,that state judicial proceedings "shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

RULES ENABLING ACT

28 U.S.C. § 2072–Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe

general rules of practice and procedure and rules of evidence for cases in the United States district courts . . . and the courts of appeal.
(b) Such rules shall not abridge, enlarge, or modify any substantive right. . . .

VIRGINIA CODE SECTIONS INVOLVED

Virginia Code § 8.01-428. Setting aside default judgments;. . .

A. Default judgments and decrees pro confesso; summary procedure. — Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent, the court may set aside a judgment by default or a decree pro confesso upon the following grounds: (I) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree.

Virginia Code § 8.01-336. Jury trial of right; . . . . —

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties.

B. Waiver of jury trial. — In any action at law in which the recovery sought is greater than $100, exclusive of interest, unless one of the parties demand that the case or any issue thereof be tried by a jury, . . . , the whole matter of law and fact may be heard and judgment given by the court. . . .

Virginia Code § 54.1-3932. Lien for fees.

Any person having or claiming a right of action

sounding in . . . contract, may contract with any attorney to prosecute the same, and the attorney shall have a lien upon the cause of action as security for his fees for any services rendered in relation to the cause of action or claim. . . .

Title 18.2 Crimes and Offenses Generally Conspiracy to Injure Another in Trade, Business or Profession, §§ 499 - 501

Virginia Code § 18.2-499. Combination to injure others in their reputation, trade, business or profession: right of employees

(a) Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, . . . , shall be jointly and severally guilty of a Class 3 misdemeanor. Such punishment shall be in addition to any civil relief recoverable under § 18.2-500.

(b) Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection (a) of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection (a) hereof.

Virginia Code § 18.2-500. Same; civil relief; damages and counsel fees; injunctions. —

(a) Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499, may sue therefor and recover three-fold the

damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel; and without limiting the generality of the term, "damages" shall include loss of profits. Such counsel shall in no case receive any other, further or additional compensation except that allowed by the court and any contract to the contrary shall be null and void.

Virginia Code § 8.01-328.1.

When personal jurisdiction over person may be exercised.

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;...;

4. Causing tortuous injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly . . .engages in any other persistent course of conduct, or derives substantial revenue from . . . services rendered, in this Commonwealth;. . .

Supreme Court, U.S.
FILED

06-177 JUN 10 2006

OFFICE OF THE CLERK

(2)

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

Isidoro Rodriguez, Esq.,

Petitioner,

v.

Danilo Davis Pereira,

Respondent.

On Petition For Writ of Certiorari
United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL APPENDIX

Isidoro Rodriguez, Esq.
Counsel for Petitioner

THE LAW OFFICES OF ISIDORO RODRIGUEZ
7924Payton Forest Trail
Annandale, Virginia 22003-1560
Telephone: 571.423.5066
E-Mail: isidoror@EarthLink.net

APPENDIX TABLE OF CONTENT

a. The unpublished Judgment Order of the Hon. Judge Gerald Bruce Lee, USDC for the E. D. of VA, No. 02-CV1523-A, July 22, 2005 ..... A-1

b. The unpublished Report and Recommendation of the Hon. Magistrate Judge Barry R. Portez USDC for the E. D. of VA, No. 02-CV1523-A, February 11, 2005 ..... A-4

Filed: July 22, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)
	)
Plaintiff,	)
	)
v.	)Civil No. 02-1523-A
	)
HPF, INC., *et al.*	)
	)
Defendants.	)

Judgment Order

THIS MATTER is before the Court on the February 11, 2005 Report and Recommendation of Magistrate Judge Barry IL Poretz regarding Plaintiff Isidoro Rodriguez's Motion for Default Judgment against Defendant Danilo Devis Pereira. Judge Poretz recommends that the Court dismiss the plaintiff's Motion for Default Judgment with prejudice for lack of personal jurisdiction. Plaintiff filed objections on February 23, 2005.

On October 15, 2002, Plaintiff Isidoro Rodriguez filed a Complaint against HFP, Inc., Iota Partners L.P., Armada Company, Sea Search Armada, Doe Entities 1-6, Murdoch & Company, Edris E. Harbeston, Jack Harbeston, Jerome Barron, Dave Laroque, Don Middlebrook, Ed Carpenter, Danilo Devis Pereira, and John Does 1-20. Plaintiff also sought *inter alia* to enforce a Virginia State Bar legal Ethics opinion under the Full Faith and Credit Act and a Virginia attorney's lien. Plaintiff additionally filed a

Notion Pursuant to the U.S. and Virginia Constitutions, as well as 28 U.S.C. 1738, for the Certification of Questions to the Supreme Court of Virginia seeking enforcement of the Attorney's Lien, and to Protect Said Lien from a Business Conspiracy and Tortious Interference. Judge Lee denied Plaintiff's motion for a certified question, and granted Defendants' Motions to Dismiss for Lack of Personal Jurisdiction. By a separate order Judge Lee held that this Court lacked personal jurisdiction over all of the Defendants, including Danilo Davis Pereira. The U.S. Court of Appeals for the Fourth Circuit affirmed Judge Lee's decision. *Rodriguez v. HFP, Inc.*, 77 Fed. Appx. 663, 2003 WL 22321038, *1 (4th Cir. 2003). The U.S. Supreme Court subsequently denied Plaintiff's petition for certiorari. 541 U.S. 903 (2004) (No. 03C 971)

On January 12, 2005, Plaintiff filed a Motion for Default Judgment against Danilo Devis Pereira. On February 8, 2005, Judge Lee assigned the case to Magistrate Judge Barry R. Poretz pursuant to 28 U.S.C. Section 636(b), and Federal Rule of Civil Procedure 72(b). Federal Rule of Civil Procedure 72(b) provides that a magistrate judge may hear a dispositive motion, without the consent of the parties, and recommend the disposition of the matter to a district judge. FED. R. CIV. P. 72(b). The Magistrate Judge found that this Court lacks the jurisdiction to hear Plaintiff's Motion for Default Judgment against Danilo Devis Pereira because Plaintiff's Complaint had been previously dismissed by the Court. Because Plaintiff does not provide any new facts that affect the Court's previous holding that the Court lack's personal jurisdiction over Defendant Danilo Devis Pereira, this Court adopts Judge Poretz's Report and Recommendation *in toto*.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Default Judgment against Danilo Devis Pereira is DISMISSED WITH PREJUDICE. Plaintiff's objections are OVERRULED.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 22nd of July, 2005.

/S/
GERALD BRUCE LEE
United States District Judge

Alexandria, Virginia
07 /22/05

Filed: July 22, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISIDORO RODRIGUEZ, ESQ.,	)
	)
Plaintiff,	)
	)
v.	)Civil No. 02-1523-A
	)
HPF, INC., *et al.*	)
	)
Defendants.	)

Report and Recommendation

I. Procedural History

Before the Court are Plaintiffs Motion forDefauit Judgment against Danilo Devis Pereira (Dkt. no. 48), Verified Affidavit in Support of Motion for Default Judgment against Daiui.io Devis Pereira (Dkt. no. 49), Notice of Hearing for Default Judgement (Dkt. no. 50), and FRCP Rule 38 Demand for a Jury Trial on th.e Issue of Damages (Dkt. no. 51). Plaintiff filed these pleadings with the Court on January 12, 2005, and set the hearing for his Motion on February ii, 2005.

On February 8, 2005, District Judge Gerald B. Lee assigned these matters to Magistrate Judge Barry R. Poretz pursuant to 28 U.S.C. Section 636(b). Because the Record in this action was stored at the Philadelphia Federal Archives and Records Center, the Clerk of this Court on February 8, 2005 requested that the Record be shipped

expeditiously to this Court. Because the Court lacked th.e Record, Judge Poretz on February 9, 2005 removed Plaintiffs instant Motion from the February 11,2005 docket to allow sufficient time for the Record to arrive from Philadelphia. The Court thereafter received the Record on February 10, 2005.

After reviewing the Record, Judge Poretz has dispensed with oral argument on Plaintiffs Motion for Default Judgment Against Danilo Devis Pereira based on the facts and legal conclusion presented in the Record.

II. Factual Summary

On October *15,* 2002, Plaintiff lsidoro Rodriguez, Esq. filed a Complaint against HFP, Inc., Iota Partners L.P., Armada Company, Sea Search-Armada, Doe Entities 1-6, Murdock & Company, Edris E. Harbeston, Jack Harbeston, Jerome Barron, Dave Larocque, Don Middlebrook, Ed Carpenter, Danilo Devis Pereira, and John Does 1-20. (Compl, Dkt. no. 1). Plaintiff sought, *inter alia,* to enforce both a Virginia State Bar legal ethics opinion under the Full Faith and Credit Act and a Virginia attorney's lien for the alleged actions of Defendants relating to the retrieval of treasures from the ship, *San Jose,* off the coast of Columbia. (Compl, Dkt. no. 1).

Motions to Dismiss for Lack of Personal Jurisdiction were filed by Defendant: (a)HFP, Inc. on November 7, 2002 (Dkt. no. 4), (b) Iota Partners, L.P. on November 7, 2002 (Dkt. no. 7), (e) Edris E. Harbeston on November 22, 2002 (Dkt. no. 18), (d) Jack Harbeston on November 22, 2002 (Dkt. no. 19), and (e) Jerome Barron on November22, 2002 (Dkt. no. 20). On November 22, 2002, Plaintiff filed a Motion Pursuant to the U.S. and Virginia Constitutions, as Well as 28 U.S.C. ' 1738, for the Certification of Questions

to the Supreme Court of Virginia as to Enforce a Virginia Attorney's Lien, and Protect Said Lien from a Business Conspiracy and Tortious Interference. (Dkt. no. 14). Judge Lee heard Defendants and Plaintiffs motions on December 13, 2002.

On December 13, 2002, Judge Lee, after hearing oral argument, denied Plaintiffs motion for a certified question and granted Defendants' motions to dismiss. (Hr'g Tr., Dkt. no. 43 at 24-25). By separate order on February 16, 2002, Judge Lee held that this Court lacked personal jurisdiction over all of the Defendants, including Daniio Devis Pereira. (Order, Dkt. no. 40 at 1-2). Judge Lee therefore "dismiss[ed] the complaint as to all Defendants" and denied Plaintiff leave to amend. (Ordef, Dkt. no. 40 at 2-3). On Plaintiffs appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed Judge Lee's decision on October 10, 2003, and the U.S. Supreme Court denied Plaintiffs petition for a writ of certiorari on March 8, 2004. *Rodriguez v. HFP, Inc.,* 77 Fed. Appx. 663, 2003 WL 22321038, *1 (4th Cir. 2003), *cert. denied,* 124 S.Ct. 1603 (2004) (No. 03-971).

III. Conclusion and Recommendation

The Magistrate Judge finds that this Court lacks the jurisdiction to hear Plaintiffs Motion for Default Judgment against Danilo Devis Pereira because Plaintiffs Complaint had been previously dismissed by this Court. Consequently, the Magistrate Judge recommends that Plaintiffs instant Motion be dismissed with prejudice.

IV. Notice

All the parties are advised that objections to this Report an.d Recommendation pursuant to 28 U.S.C. Section 636 and Federal Rule of Civil Procedure 72(b) must be filed

within ten (10) d.ays after service. A failure to file timely objections waives appellate review of a judgment based on this Report and Recommendation.

/S/
Barry R. Portez
United States Magistrate Judge

February 11, 2005
Alexandria, Virginia